IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Crl.Misc.No.13385-M of 2007

DATE OF DECISION: MARCH 06, 2007

Ravinder Pal Singh Sidhu

...PETITIONER

VERSUS

State of Punjab

...RESPONDENT

CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL

Present: Mr. Akshay Bhan, Advocate,
for the petitioner.

...

The petitioner, who is facing the trial in a corruption case under the Prevention of Corruption Act, 1988, has filed this petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as `the Code') for quashing the order dated 1.2.2007 passed by the Special Judge-cum-Additional Sessions Judge, Rupnagar, whereby the trial court has ordered to summon 32 witnesses out of 107 defence witnesses and refused to summon remaining 74 witnesses on the ground that some are unnecessary to prove the defence plea and lot of time is required for examination and cross-examination of these witnesses which only result in procrastination.

2. In this case, the petitioner is facing the trial under the Prevention of Corruption Act (hereinafter referred to as `the PC Act') on the allegation that he had demanded and accepted a sum of Rs.5,00,000/- for clearing one Bhupjit Singh in a PCS (Executive) and the petitioner was

caught red handed on 25.3.2002 while accepting a sum of Rs.5,00,000/- from Bhupjit Singh in presence of certain witnesses.

3. After examination of the prosecution witnesses when the case was listed for defence evidence, the petitioner submitted a list of 107 witnesses to be examined in defence. The Special Judge after making a thorough scrutiny of the list of defence witnesses and considering their relevancy with the prosecution case as well as the defence taken by the petitioner, came to the conclusion that 74 witnesses out of 107 witnesses are not relevant to be examined and those have been cited just only to delay the proceedings, therefore, they were not permitted to be summoned as defence witnesses. However, the petitioner was permitted to examine 32 witnesses in defence. Against the said order, the instant petition has been filed.

4. Counsel for the petitioner submitted that in the trial for offence under the PC Act , after completion of the prosecution evidence, the accused shall then be required to give in writing at once or within such time as the court may allow, a list of persons, if any, to whom he proposes to examine as his witnesses and of the documents, if any, on which he proposes to rely and he shall then be called to enter upon his defence and produce his evidence. Learned counsel submitted that if the accused after he had entered upon his defence, applies to the trial court to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, the trial court shall issue such process to the witnesses. Learned counsel further submitted that once the trial court decided to call upon the accused to enter on his defence, then he cannot cut short the list of defence witnesses in exercise of its discretion on the ground that the examination of those witnesses will require lot of time and the same will

result in procrastination.

Learned counsel further submitted that while making scrutiny of the list of defence witnesses, the trial court has not properly applied its mind and certain witnesses, which are having relevancy with the defence taken by the petitioner, have been wrongly assessed as unnecessary having no nexus with the case and have been cited with intention to delay the proceedings. Learned counsel further submitted that the accused must be given full opportunity to defend himself by citing as many number of witnesses which according to him are necessary to prove his defence. The curtailment of the right of the accused to examine the witnesses in defence will amount to not providing him fair opportunity to defend the accusation. While referring the word 'shall' in Section 243 of the Code, learned counsel submitted that when the accused is called upon to enter upon his defence and produces his evidence, it is for the accused to submit a list of witnesses to be produced in defence and such list filed by the accused should not normally be curtailed without a strong reason to be given in writing. Merely because the examination of those witnesses will take a lot of time, the trial court cannot shortlist the list of witnesses to be examined by the accused in defence.

5. After hearing the arguments of the learned counsel for the petitioner and going through the contents of the petition as well as the impugned order, I do not find any ground to interfere in the impugned order in exercise of the inherent powers of this court in Section 482 of the Code.

6. Section 243(2) of the Code clearly provides that the court has the powers to refuse to summon any person as a witness on any of the three grounds: (a) if any witness is cited for the purpose of vexation; (b) if any

witness is cited for causing delay; and (c) if any witness is cited for defeating the ends of justice. In the instant case, the Special Judge pruned down the massive list of witnesses on the ground that the same was filed with intention to delay the proceedings and lot of time will be consumed in examination and cross-examination of these witnesses which only result in procrastination. Undoubtedly, the examination of 107 witnesses in defence will consume a lot of time; and the trial will not only limp badly and procrastination will also be the inevitable consequence. The trial court in a detailed and exhaustive scrutiny, found 74 cited witnesses as irrelevant, unnecessary and vexatious for the purpose of defence.

7. Now a question arises, whether an accused has a right to examine myriad witnesses; and whether the court has any power to prune down the list of such witnesses. Exactly in similar circumstances, the same question came up for consideration before the Supreme Court in Arivazhagan v. State represented by Inspector of Police, 2000 SCC (Cri) 638, wherein it was held that no accused can claim a right to examine any number of witnesses in defence. The court has the powers under Section 243 (2) of the Code to refuse to summon any person as a witness, if he is cited for the purpose of vexation, for causing delay or for defeating the ends of justice. It was further noticed in that judgment that the position of an accused, who is involved in a case under the PC Act, is more cumbered than an accused in other cases due to legislative curbs. One of them is envisaged in Section 22 of the PC Act which amended sub-section (1) of Section 243 of the Code in its application to the trial of an offence under the PC Act. As per the amended provisions, the court is not obliged to direct an accused involved under the PC Act to enter upon his defence until the

Special Court has the occasion to see the list of his witnesses and also the list of his documents to be adduced in evidence on the defence side. An accused in other cases has to be called upon to enter on his defence irrespective of whether he would propose to adduce defence evidence because it is a choice to be exercised by him only after he is called upon to enter on his defence. But the accused under the PC Act need be called upon to enter on his defence only after the trial Judge has occasion to peruse the names of the witnesses as well as the purpose of examination of each one of them, and also the nature of the documents which he proposed to adduce as his evidence. It has been further observed that one of the main objects sought to be achieved through insertion of Section 7-A in the erstwhile PC Act was speedy trial for cases relating to the corruption. Section 22 of the PC Act requires a particular procedure to be followed relating to the filing of a list of witnesses and documents for the defence. The intention of the legislation for the aforesaid change in the procedure is mainly for achieving expeditiousness of the trial in corruption cases. It was this reason which impelled Parliament to chalk out measures to curb procrastinating procedural clues. Section 22 of the PC Act is one of the measures evolved to curtail the delay even in corruption cases. Thus, it was found that the purpose of furnishing a list of witnesses and documents to the court before the accused is called upon to enter on his defence is to afford an occasion to the court to peruse the list. On such perusal, if the court feels that examination of at least some of the persons mentioned in the list is quite unnecessary to prove the defence plea and the time which would be needed for completing the examination of such witnesses would only result in procrastination, it is the duty of the court to shortlist such witnesses. It is

also well within the powers of the Court to disallow the examination of some witnesses if the court feels that the list is intended only just to delay the proceedings.

8. In view of the aforesaid legal position and the findings recorded by the trial court in the instant case, I do not find any ground to interfere in the impugned order in exercise of the inherent powers of this Court under Section 482 of the Code.

9. There is another ground for not interfering in the impugned order. In Arivazhagan's case (supra), it was also observed by the Supreme Court that after the accused in that case completes his evidence in accordance with the permission granted to him by the trial court, it will be open to him to convince the trial court at a later stage that some more persons need to be examined in the interest of justice. It has been observed that the trial court will then decide whether it is essential for the just decision of the case to examine some more witnesses on the defence side. If the court is so satisfied, the Special Judge can permit the accused to examine such additional witnesses, the examination of whom he considers essential for just decision of the case or he can exercise the powers envisaged in Section 311 of the Code in respect of such witnesses.

10. Similarly, in my opinion, in the instant case also, if the petitioner after examination of the permitted witnesses in defence, feels that examination of some more witnesses is necessary for just decision of the case in defence, it will be open for him to convince the trial court that some more persons need to be examined in the interest of justice. If such prayer is made, the Special Judge, if so satisfied, can permit the petitioner to examine such additional witnesses, the examination of whom he considers essential

for just decision of the case or he can exercise the power envisaged in Section 311 of the Code in respect of certain witnesses.

11. In view of the aforesaid, I do not find any merit in this petition and the same is hereby dismissed.

March 06, 2007 (SATISH KUMAR MITTAL)
vkg JUDGE